

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

FILED
AUG 30 2017
Clerk, U.S. District Court
District Of Montana
Missoula

MELVIN RICHARD MULKEY,

CV 17-33-BU-DLC-JCL

Petitioner,

ORDER

vs.

STATE OF MONTANA,

Respondent.

United States Magistrate Judge Jeremiah C. Lynch entered his Order, Findings and Recommendations on July 11, 2017, recommending that Petitioner Melvin Richard Mulkey's ("Mulkey") petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed. Mulkey failed to timely object to the Findings and Recommendations, and so waived its right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Because the parties are familiar with the facts of this case, they will not be repeated here.

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Lynch's conclusion that Mulkey's petition must be dismissed because he has failed to exhaust his state law remedies, including extraordinary, direct, and collateral review of his state court conviction. Consequently, Mulkey must exhaust the available state law remedies before he is permitted to move for federal habeas relief. *Rose v. Lundy*, 455 U.S. 509, 522 (1982) (district courts must dismiss habeas petitions containing unexhausted claims).

Accordingly, there being no clear error in Judge Lynch's Findings and Recommendations, IT IS ORDERED that:

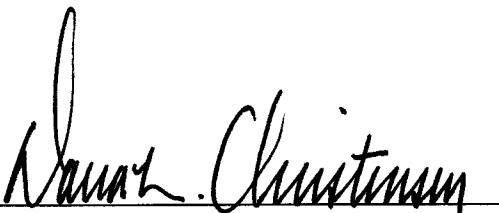
(1) Judge Lynch's Findings and Recommendations (Doc. 5) is ADOPTED IN FULL;

(2) The Petition (Doc. 1) is DISMISSED as unexhausted.

(3) The Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

(4) A certificate of appealability is DENIED.

Dated this 30th day of August, 2017.


Dana L. Christensen, Chief Judge
United States District Court